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17 Attorneys for Plaintiff and
 Counterdefendant Moog Inc.

18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20 MOOG INC.,

21 Plaintiff,

22 v.

23 SKYRYSE, INC., ROBERT ALIN
 24 PILKINGTON, MISOOK KIM, and
 DOES NOS.1-50,

25 Defendants.

26 SKYRYSE, INC.,

27 Counterclaimant,
 28

Case No. 2:22-cv-09094-GW-MAR

Hon. Margo A. Rocconi

**PLAINTIFF AND COUNTER-
 DEFENDANT MOOG INC.'S
 RESPONSE TO INDIVIDUAL
 DEFENDANTS' STATEMENT
 REGARDING MOOG'S MOTION
 TO ENFORCE AND FOR
 SANCTIONS**

Date: May 10, 2023

Time: 11:00 a.m.

Place: Courtroom 790

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vs.
MOOG INC.,
Counterdefendant.

Complaint Filed: March 7, 2022
Counterclaims Filed: January 30, 2023

1 Plaintiff and Counterdefendant Moog, Inc. hereby provides a brief response
 2 to the unauthorized “Statement” filed by defendants Misook Kim and Robert Alin
 3 Pilkington (collectively, the “Individual Defendants”) on May 5, 2023 (Dkt. 469).

4 As a threshold matter, the Individual Defendants’ Statement should be
 5 disregarded and stricken in its entirety as an unauthorized and improper sur-reply.
 6 Local Rule 7-10 provides: “Absent prior written order of the Court, the opposing
 7 party shall not file a response to the reply.” The Statement is a response to Moog’s
 8 Reply filed on April 26, 2023 (Dkt. 458), in support of its Motion to Enforce, and
 9 the Individual Defendants’ never sought the Court’s approval to file such a
 10 response.

11 Regardless, there is no basis to take the hearing on Moog’s Motion to
 12 Enforce off-calendar. The disputes that are the subject of that Motion have not
 13 been resolved. While the Individual Defendants have only just now made efforts to
 14 produce the Court-ordered communications—almost seven months after the
 15 underlying November 10, 2022 order—such severely untimely actions do not
 16 absolve their prior improper and sanctionable conduct.¹ Because of the Individual
 17 Defendants’ outright refusal to comply with the Court’s many orders for several
 18 months, Moog was forced to expend considerable resources in filing a Motion and
 19 Reply. The Individual Defendants’ “Statement” attempts to persuade the Court to
 20 ignore the Individual Defendants’ unreasonable delay, obstruction, and frivolous
 21 Fifth Amendment assertions over the course of several months. But, the law is
 22 clear that compliance with discovery requests or court orders, only after a party
 23 was forced to file a motion, is nevertheless grounds for mandatory sanctions. Rule
 24 37(a)(5)(A), cited in Moog’s reply brief, expressly provides: “If the motion is
 25 granted—*or if the disclosure or requested discovery is provided after the motion*
 26 *was filed*—the court *must*, after giving an opportunity to be heard, require the
 27 _____

28 ¹ The Individual Defendants only produced such communications to iDS, and the
 communications have still not yet been made available for Moog’s review.

1 party or deponent whose conduct necessitated the motion, the party or attorney
 2 advising that conduct, or both *to pay the movant's reasonable expenses incurred*
 3 *in making the motion, including attorney's fees.*" (Emphasis added.) Moog is
 4 properly compensated for its reasonable expenses incurred in connection with its
 5 Motion to Enforce. Moog expressly advised the Individual Defendants that it
 6 would agree to take the Motion off-calendar if it received before the hearing a
 7 reduced sanctions amount (\$7,650 instead of the \$9,350 requested). (Dkt. 469-1,
 8 pp. 6-7.) This is entirely reasonable given that it was the Individual Defendants'
 9 deliberate conduct and delay that forced Moog to incur such fees to bring the
 10 Motion. Yet, the Individual Defendants have refused this reasonable request.

11 The hearing on Moog's Motion to Enforce must proceed, as outstanding
 12 issues related to whether the Individual Defendants are in contempt of the Court's
 13 orders, and an award of monetary sanctions, remain outstanding.

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 15 Dated: May 8, 2023

SHEPPARD MULLIN RICHTER & HAMPTON LLP

16 By /s/ Rena Andoh
 17 Rena Andoh

18 Attorney for Plaintiff and Counterdefendant
 19 MOOG INC.
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